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Counsel for Plaintiff, Behring Regional Center LLC

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

BEHRING REGIONAL CENTER  
LLC,

Plaintiff,v.

ALEJANDRO MAYORKAS,  
in his official capacity as Secretary of the  
Department of Homeland Security, et al.,

Defendants.

CASE NO. 3:20-cv-09263-JSC

**ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES SHOULD  
BE RELATED**

**[NDCA L.R. 3-12]**

BEHRING REGIONAL CENTER  
LLC,

Plaintiff,

v.

ALEJANDRO MAYORKAS, in his official  
capacity as Secretary of the Department of  
Homeland Security, et al.,

Defendants.

CASE NO. 3:22-cv-01049-TSE

1                   **TO THIS HONORABLE COURT AND TO THE PARTIES AND THEIR**  
 2 **COUNSEL OF RECORD:**

3                   Plaintiff Behring Regional Center LLC (“BRC”) hereby moves pursuant to Local Rules 3-12  
 4 and 7-11 for the Court to consider whether the following cases should be related:

5                   (1) *Behring Regional Center LLC v. Alejandro Mayorkas, et al.*, 3:20-cv-09263 JSC  
 6                   (hereinafter “*BRC I*”); and

7                   (2) *Behring Regional Center LLC v. Alejandro Mayorkas, et al.*, 3:22-cv-01049-TSE  
 8                   (“hereinafter *BRC II*”)

9                   **A. Whether the Actions Concern Substantially the Same Parties, Property, Transaction,**  
 10 **or Event.**

11                  Both *BRC I* and *BRC II* involve a challenge by the same plaintiff, BRC, relating to final agency  
 12 actions taken by the same defendants, the Secretary of the Department of Homeland Security (“DHS”)  
 13 and the Director of United States Citizenship & Immigration Services (“USCIS”), in their official  
 14 capacities, amongst other government officials, relating to the same EB-5 Immigrant Investor Program.

15                  In *BRC I*, BRC, which is a regional center that participates in the EB-5 Program, filed a lawsuit  
 16 under the Administrative Procedures Act (“APA”) against the Secretary of DHS,<sup>1</sup> the Director of  
 17 USCIS, and the Policy Branch Chief of the Immigrant Investor Program Office, each in their official  
 18 capacities. *See BRC I*, 3:20-cv-09263 JSC at ECF No. 1. The focus of the claims by BRC in *BRC I*  
 19 was a rule promulgated by DHS relating to the criteria for the EB-5 Program. BRC claimed that the  
 20 rule promulgated by DHS was arbitrary and capricious and contrary to law, including in relation to the  
 21 Federal Vacancies Reform Act. BRC sought declaratory and injunctive relief. The Court granted  
 22 judgment in favor of BRC.

23                  In *BRC II*, BRC has filed suit under the APA against the Secretary of DHS and the Director of  
 24 the USCIS, along with the Secretary of State and the Assistant Secretary of State, each in their official  
 25 capacities. *See BRC II*, 3:22-cv-01049-TSE at ECF No. 1. The focus of the claims by BRC in *BRC II*  
 26 is a decision by DHS to refuse to accept applications for the EB-5 Program from regional centers based

27 \_\_\_\_\_  
 28 <sup>1</sup> The original named lead defendant in *BRC I* was Chad Wolf, then acting Secretary of DHS. After Secretary Mayorkas was confirmed by the Senate, he was substituted in as the lead defendant in *BRC I* pursuant to Federal Rule of Civil Procedure 25(d).

1 upon DHS's interpretation of the EB-5 statute. DHS's decision has in turn caused the State Department  
2 to cease to issue visas in relation to EB-5 Program as it concerns regional centers. BRC claims that  
3 this decision, which constitutes an agency action, is in violation of the plain meaning of the statute.  
4 BRC seeks declaratory and injunctive relief.

5 BRC is being represented by the same counsel in both matters and the government defendants  
6 are represented by the same counsel from Department of Justice in both matters.

7 **B. Whether it Appears Likely that There will be an Unduly Burdensome Duplication of**  
8 **Labor and Expense or Conflicting Results if the Cases are Conducted Before Different**  
9 **Judges.**

10 In *BRC I*, there was substantial briefing and argument presented to the Court concerning the  
11 overall history and structure of the EB-5 Program, including its statutory foundation and the scope of  
12 the Program. There was significant factual presentation in *BRC I*, including a declaration by BRC,  
13 concerning BRC's participation as a regional center in the Program and the effects upon BRC due to  
14 the rule promulgated by DHS; effects that are the same or similar to those caused by DHS's currently  
15 changed rule. DHS also presented facts with regard to participation by regional centers such as BRC  
16 in the EB-5 Program. Lastly, the parties also briefed the legal standards and issues relating to agency  
17 actions under the APA in *BRC I* and remedies.

18 Given this history of *BRC I* and the same issues that will be attendant in *BRC II*, there will be a  
19 commonality of facts between *BRC I* and *BRC II* with respect to the history and structure of the EB-5  
20 Program, BRC's participation in the program, and the effects upon BRC due to DHS's decisions with  
21 respect to the rule at issue in *BRC II*. Further, the statutory authority for the EB-5 Program, and the  
22 legal standards and some of the pertinent authorities with respect to challenges under the APA will or  
23 are likely to be the same *BRC I* and *BRC II*.

24 Overall, given the amount of the parties' and Court's time already expended in relation to an  
25 understanding of the EB-5 Program, BRC's status a regional center, and the legal basis for the similar  
26 challenges to rules enacted by DHS with respect to the EB-5 Program under the APA, and the Court's  
27 familiarity with the parties and counsel, BRC believes that there will be substantial judicial efficiencies  
28 if *BRC II* is related to *BRC I*. As such, pursuant to its obligations under Rule 3-12(b), BRC moves for  
the Court to consider whether to relate the above-captioned actions.

1 Dated: March 4, 2022

Respectfully submitted,

2 By: /s/ Todd A. Pickles

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